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safety of servants is one of the nonassignable duties of the master, and a servant, while engaged in the performance of that duty, is a "vice principal."

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Vice Principal. 6 Va.-W. Va. Enc. Dig. 7.]

**9. Master and Servant (§ 289 (21)\*)—Injuries to Servant—Jury Question.**—Where the danger to a servant was so open and obvious and his opportunity of knowledge so complete as to leave no doubt that he knew, or should have known, the question of his right to recover is one of law for the court.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 726.]

(Additional Syllabus by Editor.)

**10. Appeal and Error—Disposition of Cause—Reversal—Entering Judgment.**—Where the judgment of the trial court in overruling a demurrer to the evidence is reversed the appellate court will enter such judgment as the trial court should have entered, sustaining the demurrer to the evidence and dismissing the case.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 628, et seq.]

Error to Corporation Court of City of Radford.

Action by one Dalton against the Lynchburg Foundry Company. There was a judgment for plaintiff, and defendant brings error. Reversed.

*Caskie & Caskie*, of Lynchburg, for plaintiff in error.

*H. C. Tyler*, of East Radford, for defendant in error.

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VIRGINIA IRON, COAL & COKE CO. *v.* PROPHET'S ADM'R.

Sept. 20, 1917.

[93 S. E. 590.]

**1. Appeal and Error (§ 1002\*)—Review—Verdict.**—A verdict on conflicting evidence is conclusive on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

**2. Master and Servant (§ 293 (16)\*)—Injuries to Servant—Actions—Instructions.**—In an action for damages for the death of an employee in a mine, who came in contact with a hanging electric wire, where the declaration charged it was the duty of the employer to use reasonable care to maintain the wire in a safe position and a breach of that duty, an instruction that it was the duty of the employer to use care commensurate with the danger to inspect and maintain the wire was justified, though there was no allegation to

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

that effect; the duty of inspection being an incident to the duty of maintaining the wire.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 661.]

**3. Master and Servant (§ 125 (1)\*)—Injuries to Servant—Duty of Master.**—It is the duty of a mine operator to use reasonable care to make a fallen electric wire reasonably safe, after it knew, or by ordinary care might have known, of the defect.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 680.]

**4. Master and Servant (§ 265 (14)\*)—Injuries to Servant—Contributory Negligence—Burden of Proof.**—The burden of proving contributory negligence is on the master, unless the servant's own negligence establishes it.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 723.]

Error to Circuit Court, Wise County.

Action by Asa Prophet's administrator, against the Virginia Iron, Coal & Coke Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

*Bullitt & Chalkley*, of Big Stone Gap, and *Jackson & Henson*, of Roanoke, for plaintiff in error.

*Bond & Bruce* and *Fulton & Vicars*, all of Wise, for defendant in error.

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#### WADKINS v. DAMASCUS LUMBER CO.

Sept. 20, 1917.

[93 S. E. 591.]

**1. Appeal and Error (§ 839 (2)\*)—Review—Successive Trials.**—It is the rule that, where there have been two trials, the appellate court must look first to the evidence and proceedings on the first trial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 578.]

**2. Appeal and Error (§ 839 (2)\*)—Review—Successive Trials.**—Where evidence upon each of two trials was identical, the latter verdict being the larger, evidence on the second trial alone will be considered on plaintiff's appeal, where defendant's demurrer to evidence was sustained, since, if there was no error to plaintiff's prejudice on the second trial, there could have been none on the first, and it was immaterial that there was a view of the premises by the jury on the first trial, and not on the second.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 578.]

**3. Appeal and Error (§ 997 (2)\*)—Review—Demurrer to Evidence.**—Plaintiff's position being more favorable upon a demurrer to evi-

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